

D L E E S T R Y

FILE *Personnel 17*

12 September 1968


Mr. 

Mr. Bauman FYI
We'll techle for 8 Feb 69
18 Sept 68
25X1

A couple of weeks ago you asked (DDS-68-4179) that I bring you up to date on the progress of the actuarial study programs being developed for the CIA Retirement system. A summary status report is attached. We will be glad to elaborate to any extent you like.

At the moment we are either on or ahead of schedule. We see no abnormal risk and expect to be ready in plenty of time to meet the deadlines.

Several manual processes are involved as well as some of the existing computer files requiring jerry-rigged procedures to pull them all together and get the first actuarial study on the air. The SIPS CIA Retirement and Disability (CIARDS) subsystem is tied directly to the SIPS Payroll and Personnel and Position status subsystems. When implemented CIARDS will produce the data necessary to perform the actuarial studies and tie directly into the programs now being produced. The actuarial study programs can be considered as one module or building block in the overall SIPS/CIARDS system. Because of integral relationships with other subsystems, it would be extremely difficult to isolate any other elements of CIARDS, or its entirety, and accelerate its total implementation ahead of other SIPS systems. It could be done, if necessary to help pacify management, by rigging manual procedures to substitute for computer systems interfaces with personnel and financial systems; but it would be difficult, time consuming, and obviously something we would prefer not to do.


Chief, Support Services Staff

25X1

Attachment

10 July 69

Mr. Coffey -

Time speeded by and I never
had the opportunity to check
on the attached in February.
Any current action required?

p.

A handwritten signature, possibly "M", is written below the text.

Please return to the file.

Development of the
Actuarial Study Subsystem

BACKGROUND

In accordance with Public Law 88-643 dated October 13, 1964, entitled the "Central Intelligence Agency Retirement Act of 1964 for Certain Employees," the Director "shall cause to be made actuarial valuation of the fund at intervals of five years,"

At the request of the Director of Central Intelligence, the Secretary of the Treasury designated Mr. Cedric Kroll, the U.S. Government Actuary, to make such valuations.

The first actuarial study will be made in 1969 by Mr. Kroll from computer produced data on activity of Agency Participants in 1965, 1966, 1967 and 1968.

REQUIREMENT

Essentially the product data Mr. Kroll requires consists of a series of mathematical or statistical tables detailing the annual activities of actives (Employee Participants), Principal and Survivor Annuitants, and mortality rates across the board.

DATA SOURCE

The existing Master Record Subsystem from Personnel computer files plus payment and receipts data from the Finance records are combined to create the data base needed for the Actuarial study.

SYSTEM DESIGN

Phase 1: Expand the present Master Record and incorporate additional data; primarily on surviving children.

Status: Completed

Phase 2: From the revised record, create an Annual activity record for each participant and print 1965, 1966 and 1967 Annual Activity Balance Sheets for Actives, Principal Annuitants and Survivor Annuitants. Correct any record errors detected from balance sheet reports.

Status: Completed

Phase 3: From the Annual Activity Record file, produce the Payments and Receipts Input Forms. These forms are to be completed by Finance. This monetary data is added to the Annual Activity Records. The file of completed records is called the Actuarial Study File.

Status: Finance has completed input forms (340 manhours expended). This data will be incorporated into the record by the end of September.

Phase 4: From the Actuarial Study File, complete statistical reports to enable the U.S. Government Actuary to calculate trend curves needed for establishing attrition and probability rate factors. These factors are used in the formulae for projecting strength and monetary data.

Status: The program has been completed and debugged. It has not been tested with live data.

Phase 5: Using the rates calculated by the U.S. Government Actuary, project (by computer) strength, payments and receipts data on an annual basis for approximately seventy years.

Status: Programming currently in process.

FUTURE PLANNING

The total system will be tested in December 1968 with dummy attrition data, probability ratios, etc.

The Annual Activity Record will be updated in February 1969. The Statistical tables needed for calculating attrition and probability ratios will be given to the U.S. Government Actuary in March 1969.

Calculation of adjusted probability ratios will be completed by May 1969.

Computer driven projections will be produced in June 1969.

The narrative and statistical Actuarial Valuation should then be completed by U.S. Government Actuary by September 1969.

INFORMATION

MR. BANNERMAN



REGISTRY

FILED

Personnel 17

DD/S 68-4179

15 August 1968

MEMORANDUM FOR: Chief, Support Services Staff, DD/S

Bob:

In discussing CIA Retirement Fund investments with Mr. Bannerman, Mr. Bush referred to the actuarial study which is to be completed by next year. He added a phrase indicating crossed fingers that the "machines" will be able to accomplish their job in that time frame. Could you educate us on this subject, and, specifically, whether we are in danger of missing the deadline for "machine" reasons.

[Redacted Signature]

John W. Coffey

ILLEGIB

ADD/S:JWC/ms (15 Aug 68)

Distribution:

Orig & 1 - Adse

1 - DD/S Chrono

1 - DD/S Subject ✓

~~SECRET~~

DD/S 68: 4/263

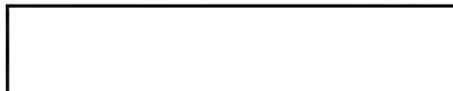
13 August 1968

FILE Personnel 17

MEMORANDUM FOR THE RECORD

SUBJECT: Investments for the CIA Retirement Fund

Reference is made to the 3 July 1968 memorandum from the Director of Finance, subject, Investments for the CIA Retirement Fund. With the Assistant DD/S I discussed this matter with Mr. Bush as to the nature of other Government securities, the guarantees behind these securities and whether they were subject in any way to Congressional change or adjustment. These securities are really the same as Treasury issuances but they do not bear the known guarantees of a Treasury issuance. At this time we have no policy position nor formula on the ratio investment of CIA retirement fund monies in Treasury issuances and other Government securities. I advised Mr. Bush that until we have our actuarial study, which is to be completed in October of 1969, he should play down the investment in other Government securities and in no instance exceed 5% of our total investment. Mr. Bush advised that quite likely it will be less than this and the difference in interest rates is changing to equate to that of a Treasury issuance. When we have our actuarial study, we will then come up with a firm formula on our investment portfolio for retirement funds.



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K. L. Bannerman
Deputy Director
for Support

Att

Memo dtd 3 July 68 for DD/S
fr D/Fin, subj: Investments
for the CIA Retirement Fund

Distribution:

- Orig - DD/S Subject w/O of att (DD/S 68-3458)
- 1 - DD/S Chrono
- 1 - D/F

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Miriam

A copy to
Les Bush

AT



17 Aug 68

MR. BANN

MR. COFI

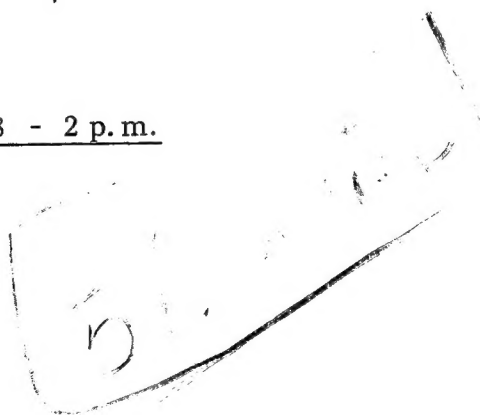


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MIRIAM--(I called Mr. Bush's
secretary and read Mr. B's
note to her. Mr. Bush will
call for an appointment early
next week.)

13 August 1968 - 2 p.m.

Mr. Bush



STAT

Approved For Release 2003/05/05 : CIA-RDP84-00780R0

TRANSMITTAL SLIP

Date
12 July 1968

TO:

Mr. Bannerman via Mr. Coffey

ROOM NO.

BUILDING

REMARKS:

The attached memorandum from Mr. Bush was discussed at ^{yes yesterday} today's noon meeting. In it he answers the four questions which you ask about the investment of CIA retirement funds in other Government Agency securities.

Mr. Bush advised that he would certainly let you know in advance of making such purchases until such time as it might become so routine as to require only reporting that such purchases had been made.

FROM:

H, M.

(OVER)

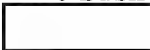
ROOM NO.

BUILDING

EXTENSION

FORM NO. 241
1 FEB 55REPLACES FORM 36-8
WHICH MAY BE USED.

(47)

STAT The delegation of authority which
Mr. Bush refers to in paragraph 1.c is in
 and says, "There is hereby
delegated to the Director of Finance all
authorities as are necessary for the
administration of the Fund except those which
are specifically reserved to the Director
in this regulation."

There is no specific reservation relating
to the type of investment being considered.



~~SECRET~~

DD/S 68-3458

Personnel 17

3 July 1968

MEMORANDUM FOR: Deputy Director for Support

SUBJECT : Investments for the CIA Retirement Fund

REFERENCE : DD/S 68-3175 dtd 24 June 68

1. Our interest in and investigation of the investment potential of other Agency securities resulted from recommendations of our Treasury Department investment advisors that we should consider the purchase of other Agency securities for the Retirement Fund. Based on the Treasury representatives' recommendation and our review, we feel that some investment in these securities would be advantageous to the Retirement Fund. We, accordingly, propose to purchase such securities at the times and in the amounts recommended by the Treasury advisors.

a. We have not established any formula or percentage factor to govern the portions of other Agency securities to be purchased for the Fund. We propose to rely on our Treasury advisors for advice as to the amounts to be invested. Since such securities, for purposes of investment for all Government fiduciary, trust and public funds, are equated with direct Government securities, return on investment and maturity dates will be the primary considerations. In any case, I do not foresee that any significant portion of our funds will be invested (or will become available for investment) before our investment plan is re-examined after the projected actuarial study is completed in October 1969.

b. The other Agency securities are not guaranteed by the U. S. Government in the same way that U. S. Treasury bonds and notes are; however, they are issued by Government agencies and corporations under authority granted by Congress and, as stated above, have been determined by Congress and the U. S. Treasury Department to be lawful and proper investments for all fiduciary, trust, and other public funds which are generally restricted to Government-secured securities. In discussions with our Treasury advisors, they took the position that the slight difference between a Treasury guarantee and other-Agency guarantee should not in any way be a deterrent to our investment in the other Agency securities.

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SUBJECT: Investments for the CIA Retirement Fund

-2-

c. We do not believe that we need specific approval of the Director to invest in funds of other Agencies. The Director has delegated authority to the Director of Finance to invest in securities as approved by the Secretary of the Treasury. The Treasury has recommended these securities for investment, and our General Counsel has concurred in the view that such investments are legal. Therefore, it would appear that subject to the requirement for Treasury Department approval, investments in the other securities would be proper under delegations already granted.

d. Our current investment plan is as recommended by the U. S. Treasury. The plan is to purchase U. S. Treasury bonds and notes and possibly other Agency securities with relative short maturity dates; i.e., maturing before 1980, and yielding the highest return. Within this investment guideline, our U. S. Treasury advisors, prior to each purchase, review the various bonds and notes available in the market and recommend which ones we should buy. There is no speculative factor in our holdings since we do not propose to sell securities prior to maturity. Therefore, regardless of the market performance, it is our intention and Treasury's to hold the various bonds and notes to maturity at which time face value is guaranteed.

2. I will be glad to discuss this matter in such further detail as you may desire.



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L. E. BUSH
Director of Finance

~~SECRET~~

STAT

DD/S 68-3175

24 JUN 1968

MEMORANDUM FOR: Director of Finance

FILE *Personnel 17*

SUBJECT : Investments for the CIA Retirement Fund

REFERENCE : Memo dtd 17 June 68 to DD/S fr D/F, subj:
Status Report and Comments on the Investments
for the CIA Retirement Fund

1. In reference to your memorandum I would appreciate a further explanation of paragraph 3; namely, are you proposing to purchase other agency securities for the CIA Retirement Fund? If so, I would like to know whether a formula has been established, namely:

a. What portion of the portfolio will be placed in other agency securities?

b. Are all such securities guaranteed?

c. Do we need the specific approval of the DCI to purchase other securities in our investment portfolio?

d. What procedure is established for the selection of the purchases, who is proposed as the authority to make the decision, and is it proposed that these be turned over at any point if their market performance appears to be adversely affected?

2. All of these questions may have been answered in another paper, but I do not have that available at this time. If we do not have such a system, I believe one should be so established.

SIGNED R. L. Bannerman

R. L. Bannerman
Deputy Director
for Support

DD/S:RLB:es (22 June 68)

Distribution:

Orig & 1 - Adse 1 - DD/S Subject w/ref (DD/S 68-3088) 1 - DD/S Chrono

SECRET

STAT

TRANSMITTAL SLIP

DATE

19 June 1968

TO:

Mr. Bannerman

ROOM NO.

BUILDING

REMARKS:

Attached is the current status report on the CIA Retirement Fund Investments together with examples of the types of rewrites recommended for investment. The General Counsel's opinion, attached, is that the Director may invest in such funds.



SWR

FROM:

ROOM NO.

BUILDING

EXTENSION

FORM NO. 241
1 FEB 55

REPLACES FORM 36-8
WHICH MAY BE USED.

(47)

ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM: Director of Finance		EXTENSION		NO.
STAT <input type="text"/>				DATE
				25X1
TO: (Officer designation, room number, and building)		DATE		COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)
		RECEIVED	FORWARDED	
1. Deputy Director for Support				
2.				
3.				
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SECRET

OF 68-0996

DD/S 68.3088

17 JUN 1968

MEMORANDUM FOR: Deputy Director for Support

SUBJECT : Status Report and Comments on the Investments
for the CIA Retirement Fund

1. In accordance with our recent discussion, the attached schedule A has been prepared to show the securities presently held in the portfolio of the CIA Retirement Fund.

2. Also attached is the opinion of General Counsel relative to broadening the investment fund to include those agency securities which Congress has designated as lawful investments "for all fiduciary, trust, and public funds". Our Treasury advisors have recommended that we include such securities as stated in paragraph 2 of attachment B as part of our portfolio. Listed below are examples of two of these securities.

<u>Security</u>	<u>Coupon</u>	<u>Maturity Date</u>	<u>Price Range</u>	<u>Yield to Maturity</u>
Participations	4.70%	12-1-77	87 1/4 - 88 1/4	6.36%
of FNMA	5.40%	4-1-78	92 - 93	6.36%
	4.50%	7-1-78	85 1/4 - 86 1/4	6.36%
Federal Land				
Bank Bonds	4.125%	2-20-73/78	83 5/8 - 84 5/8	6.27%

The other agency securities are short-term types, similar to U. S. Treasury bills. These also would merit consideration when our projected cash needs may require shorter term maturities.

3. Accordingly, with the advice and recommendation of our Treasury advisors, we contemplate purchasing other agency securities in addition to U. S. Treasury bonds and notes for the CIA Retirement Fund.

4. Reports will be furnished on a quarterly basis showing the current transactions as well as the totals to date of all securities purchased and held for the Fund.

[Redacted Signature Box]

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/ L. E. BUSH
Director of Finance

Attachments:
A & B

SECRET

GROUP 1
Excluded from automatic
downgrading and
declassification

25X1

Approved For Release 2003/05/05 : CIA-RDP84-00780R002400030002-3

Next 2 Page(s) In Document Exempt

Approved For Release 2003/05/05 : CIA-RDP84-00780R002400030002-3

THE GENERAL COUNSEL OF THE TREASURY

WASHINGTON, D.C. 20220

October 12, 1966

To: Secretary Fowler
From: Fred B. Smith
General Counsel
Subject: Authority to invest the trust funds in securities of certain agencies

This Opinion is to confirm and develop the oral advice which I have given in the past several weeks to the effect that the trust funds and other investment accounts, the investment of which is subject to your authority, may lawfully be invested in certain agency securities. For the reasons outlined below, it is my opinion that you have authority to invest these investment accounts in those agency securities which Congress has designated as lawful investments "for all fiduciary, trust, and public funds."

The following agency securities in which investment has been made or contemplated have been designated as lawful investments for fiduciary and trust funds in the statutes authorizing their issuance:

Farm loan bonds issued by Federal land banks, section 27 of the Federal Farm Loan Act of 1916, 39 Stat. 380, 12 U.S.C. 941.

Obligations of the Federal Home Loan Banks, section 15 of the Federal Home Loan Bank Act of 1932, 47 Stat. 736, 12 U.S.C. 1435.

- 2 -

Debentures of the Federal intermediate credit banks, section 6(b) of the Farm Credit Act of 1935, 49 Stat. 316, 12 U.S.C. 1045. ✓

Debentures of the banks for cooperatives, section 1 of the Act of August 23, 1954, 68 Stat. 770, 12 U.S.C. 1134m.

— Participations of the Federal National Mortgage Association, section 311 of the FNMA Charter Act, as enacted in the Housing Act of 1954, 68 Stat. 622, and as amended by section 701(b) of the Act of September 2, 1964, 12 U.S.C. 1723c.

There has been no serious doubt of your authority to invest the trust and other investment accounts in the obligations of the Federal Home Loan Banks, the debentures of the Federal intermediate credit banks and the FNMA participations. The statutes above listed concerning investment of trust funds in these securities are clear. These enactments provide that these securities:

" . . . shall be lawful investments, and may be accepted as security for all fiduciary, trust, and public funds, the investment or deposit of which shall be under the authority and control of the United States or any officer or officers thereof."

I recognize that the statutes creating most of the trust funds subject to your investment, enacted in some cases before and in other cases subsequent to the statutory authority above quoted, are explicit in directing that these trust funds are to be invested in obligations or bonds or notes of the United States, and in important instances, "only" in obligations of the United States or in obligations the interest and principal of which are guaranteed by the United States. Nevertheless, it is my conclusion that the investment provision for specific agency securities, above quoted,

- 3 -

provides supplementary authority for investment of the trust funds in those particular securities.

This conclusion corresponds with that reached by the Attorney General on this exact question in an opinion directed to the Postmaster General, dated April 4, 1934, 37 O.A.G. 479. The Attorney General advised that the postal savings funds could lawfully be invested in the bonds of the Federal Farm Mortgage Corporation by virtue of the provision in the Federal Farm Mortgage Act of January 31, 1934, 48 Stat. 345 (12 U.S.C. 1020c, now repealed) designating those bonds as lawful investments for trust funds under the control of the United States. It was unnecessary, the Attorney General held, to consider whether the bonds of the Federal Farm Mortgage Corporation were "bonds or other securities of the United States," the securities specified for investment in the statute then governing investment of the postal savings funds (39 U.S.C. 759 (1952 ed.)).

Congress ratified the result reached by the Attorney General when, in its 1960 revision, codification and enactment of Title 39, it expanded the provision for investment of postal savings funds to include investment "in other obligations which are lawful investments for trust funds of the United States" (39 U.S.C. 5218). It did so with the following significant explanation now carried in the note to that section:

"This section covers the provisions of section 759 of title 39, relating to funds not deposited in banks and the

- 4 -

use thereof for the purchase of Government obligations. The phrase 'in other obligations which are lawful investments for trust funds of the United States' has been added in subsections (a) and (b), since various provisions of law authorize instruments of the United States to issue obligations which by the enabling statutes are made lawful investments for all fiduciary, trust and public funds of the United States. Cf. section 311 of the National Housing Act, as amended. As postal savings funds are trust funds, the quoted phrase has been inserted for clarity." (Senate Report 1763, 86th Cong., 2d Sess. A79.)

I might add that my interpretation of the effect of the lawful investment provisions is not new in the Department. My predecessor, General Counsel Elbert P. Tuttle, during the Department's consideration of section 311 of the FNMA Charter Act, as proposed in the then pending Housing Act of 1954, expressed agreement with the conclusion that section 311 authorizing investment of trust funds in FNMA obligations modified the existing provisions governing the investment of the trust funds.

The statutes authorizing investment of fiduciary, trust and public funds in farm loan bonds and in bonds of the banks for co-operatives do not contain the explicit provision that they apply to such funds "under the authority and control of the United States or any officer or officers thereof." Any doubt that the absence of this descriptive provision negates authority for the investment of trust funds held by you has been removed by study of the intent of Congress in enacting the investment provisions in the 1916 and 1954 statutes cited earlier. The study of the legislative history of these provisions by the Office of Legal Counsel of the Department of

- 5 -

Justice, reported in the attached copy of a letter to me from Assistant Attorney General Wozencraft, dated October 7, 1966, demonstrates that these provisions were considered by Congress to authorize the investment of trust funds held by officers of the United States and to be the equivalent of the other more explicit provisions.

The advice from the Office of Legal Counsel in other respects also fortifies my conclusion that you have statutory authority to invest the trust and investment accounts subject to investment by you in the agency securities made lawful investments for fiduciary, trust and public funds by Congress in the specific legislation above reviewed.

Attachment:



STAT

Department of Justice

Washington
20530

OCT 7 1966

Honorable Fred B. Smith
General Counsel
Department of the Treasury
Washington, D. C. 20220

Dear Mr. Smith:

This is in response to your inquiry of September 28, 1966, for our views as to the existence of authority for the investment of Government trust funds in obligations of the Federal land banks and the Banks for Cooperatives.

The relevant statutory provision in the case of the land banks reads as follows: 1/

Farm-loan bonds issued . . . by Federal land banks or joint-stock land banks shall be a lawful investment for all fiduciary and trust funds, and may be accepted as security for all public deposits.

The essentially identical provision applicable to Banks for Cooperatives reads as follows: 2/

Debentures issued . . . by banks for cooperatives shall be a lawful investment for all fiduciary and trust funds, and may be accepted as security for all public deposits.

Your question arises mainly from a comparison of the language of these statutes, which does not explicitly embrace

1/ Section 27 of the Federal Farm Loan Act of 1916, 39 Stat. 380, 12 U.S.C. 941.

2/ Section 1 of the Act of August 23, 1954, 68 Stat. 770, 12 U.S.C. 1134m.

Government trust moneys, with that used in a number of other enactments. 3/ These enactments provide that the securities whose issuance they authorize

shall be lawful investments; and may be accepted as security, for all fiduciary, trust, and public funds the investment or deposit of which shall be under the authority or control of the United States or any officer or officers thereof.

This language, unlike the other, presents no problems of construction and plainly permits investments of the various Government trust funds in the affected securities whether or not the statutes creating the trusts themselves do so. 4/

An examination of the legislative history of the 1916 provision quoted above--i.e., the one applicable to the bonds issued by Federal land banks--and of later enactments has led me to the conclusion that Government trust funds may be invested both in those bonds and in issues of the Banks for Cooperatives.

At the outset it should be noted that the Government had administered trust funds under statutes of one kind or another for many years before 1916 and that the existence of these trusts was obviously well known to Congress. 5/ Although the number, variety and magnitude of the trust funds is today much greater than in 1916, their nature and the responsibilities they entail are much the same.

3/ Section 15 of the Federal Home Loan Bank Act of 1932, 47 Stat. 736, 12 U.S.C. 1435; section 4(a) of the now repealed Federal Farm Mortgage Corporation Act of 1934, 48 Stat. 345; section 6(b) of the Farm Credit Act of 1935, 49 Stat. 316, 12 U.S.C. 1045; section 311 of the FNMA Charter Act of 1954, 68 Stat. 622, 12 U.S.C. 1723c.

4/ 37 Op. A.G. 479 (1934).

5/ See, for example, 17 Op. A.G. 217 (1881), proceeds of sale of school lands held in trust for States; section 4 of the Act of February 20, 1893, 27 Stat. 470, Minnesota v. Hitchcock, 185 U.S. 373, 394-395 (1902) and 29 Op. A.G. 455 (1912), funds held in trust for Indians; section 9 of the Act of June 25, 1910, 36 Stat. 816, funds held in trust for postal savings depositors.

The 1916 legislation provided that farm-loan bonds shall be a lawful investment for all fiduciary and trust funds. On its face this language includes funds held by the Government as a fiduciary, just as the immediately following authorization for the acceptance of the bonds as security for all public deposits plainly includes Government deposits. An excerpt from the House debates on the legislation reveals that this literal reading is correct: 6/

Mr. MANN. I would like to make an inquiry about a paragraph in the section making these farm-loan bonds a lawful investment for all fiduciary and trust funds. I take it we can not make a lawful investment for State institution trust funds. We can not provide what the State court shall take for a lawful investment or what the State shall provide shall be a lawful investment for savings banks. We can not control State corporations or State courts.

Mr. WINGO. Will the gentleman permit a suggestion? That is true, of course, but there are frequently a good many fiduciary and trust funds that are in the hands of Federal agencies, in Federal courts.

Mr. MANN. That is all right.

Mr. WINGO. Now, does the gentleman think it necessary to say funds that are in the custody of Federal agents or Federal courts? Does not the law within itself fix the limitations?

Mr. MANN. I think it does fix it, but still where you state that it shall be a lawful investment for all fiduciary and trust funds the language

6/ 53 Cong. Rec. 8011, May 15, 1916.

of the bill would indicate that we are endeavoring to intrench upon the prerogatives of the State, and so we put in some provision making a limitation. I simply call it to the attention of the committee. I do not ask for an amendment here. Make it plain that we are not trying to control what the States have the power to control.

Mr. GLASS [Chairman of the Banking and Currency Committee, which had reported the pending legislation to the House]. I assure the gentleman that that will be done. (Underlining added.)

Although it does not appear that Chairman Glass took any action later on Mr. Mann's point, his concurrence in Mr. Mann's remarks was enough to make them authoritative. 7/ In short, the record shows that farm-loan bonds were intended to be made eligible for the investment of trust funds administered by Government agencies. 8/

I am aware that at least six statutes enacted after 1916 with regard to particular trust funds have specifically conferred authority for the investment of the funds in Federal farm-loan bonds, along with the usual authority for investment

7/ This is not to say that Mr. Mann was correct in his comments as to the lack of power on the part of Congress to prescribe the eligibility of securities for investment by State institutions. It is not necessary to examine the validity of his position for present purposes.

8/ Shortly after the quoted colloquy occurred, another Member of the House proposed an amendment to give the trustees of the postal-savings funds authority to invest up to 50% of the postal savings deposits in farm-loan bonds. He stated that "it is entirely possible" that the funds could be so invested under the provision discussed by Mr. Mann, but that he wanted "to make it absolutely sure that there is no doubt about it." The amendment was rejected after a debate that developed nothing of relevance here. 53 Cong. Rec. 8012.

in obligations of the United States. 9/ The histories of these provisions, which were passed between 1926 and 1964, do not disclose why farm-loan bonds were expressly included, but the most likely explanation is that these actions constituted recommendations for investment. There is no reason to believe in any case that the inclusion of the bonds reflected a post hoc congressional view that the 1916 legislation was ineffective to qualify them for investment by trustee agencies. And even if a view of that kind could be shown, it would merit little attention when weighed in the balance with the contrary understanding of the Congress that put the 1916 statute on the books. S.E.C. v. Capital Gains Bureau, 375 U.S. 180, 199-200 (1963); United States v. Philadelphia National Bank, 374 U.S. 321, 348-49 (1963).

It is interesting, though again not particularly significant, that Congress in 1935 indicated that the 1916 provision is on a par with the more recent statutes speaking of trust funds whose investment is "under the authority or control of the United States or any officer or officers thereof." This language was used in section 4(a) of the Federal Farm Mortgage Corporation Act of 1934. 10/ A year later it was used again in section 6(b) of the Farm Credit Act of 1935. 11/ In explaining the language at this time, the congressional committees in both houses described it as "comparable to existing provisions with respect to farm-loan bonds and bonds of the Federal Farm Mortgage Corporation." 12/ (Underlining added.)

Turning to the obligations of the Bank for Cooperatives, we need to refer once more to legislative history. The Act of August 23, 1954, 13/ which made use of the 1916 language in

9/ Act of October 13, 1964, 78 Stat. 1061; Act of October 4, 1961, 75 Stat. 796, 26 U.S.C. 7448(e); Act of June 7, 1924, 43 Stat. 612, 38 U.S.C. 755(b); Act of August 3, 1956, 70 Stat. 1021, 28 U.S.C. 376(d); Act of March 4, 1927, 44 Stat. 1444, 33 U.S.C. 944(d); Act of July 3, 1926, 44 Stat. 910, 5 U.S.C. (1952 ed.) 720.

10/ Supra, footnote 3.

11/ Ibid.

12/ S. Repts. 31 and 45, 74th Cong., 1st sess., each at p. 4; H. Rept. 84, 74th Cong., 1st sess., p. 4.

13/ Supra, footnote 2.

relation to those obligations, was drafted by the Farm Credit Administration. The Governor of that agency, in submitting the draft legislation to Congress, stated:

Debentures of the banks for cooperatives . . . would be accorded the same status with respect to investment of fiduciary and trust funds under the jurisdiction of the United States and as security for public deposits as is presently accorded the farm loan bonds of Federal land banks under section 27 of the Federal Farm Loan Act" 14/

It is necessary to add only that the view we have expressed with regard to federal farm-loan bonds is, by reason of this quotation, applicable to the obligations of the Banks for Cooperatives.

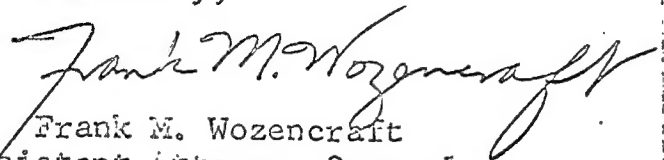
It might be noted that the more recent language considered here was apparently first used in section 15 of the Home Loan Bank Act of 1932. 15/ Neither at that time nor at the later times that it was employed has Congress presented any reason for its particular content or for the departure from the language of the 1916 enactment. It may well be that the new provision was devised to answer the question raised by Congressman Mann in 1916--that is, to rule out the possibility of the coverage of trusts ordinarily subject only to State regulation. In any event, whatever the intention or rationale of Congress from time to time in employing the new provision in certain statutes, its actions did not have the effect of limiting the scope of the antecedent provision in the Federal Farm Loan Act, nor do they constitute a basis for construing that provision any differently than Congress intended when enacting it in 1916. S.E.C. v. Capital Gains Bureau and United States v. Philadelphia National Bank, supra.

14/ S. Rept. 1498, 83d Cong., 2d sess., p. 2; H. Rept. 2101, 83d Cong., 2d sess., p. 4.

15/ Supra, footnote 2.

To repeat, it is our conclusion that Government trust funds may properly be invested in obligations of the Federal land banks and the Banks for Cooperatives.

Sincerely,



Frank M. Wozencraft
Assistant Attorney General
Office of Legal Counsel

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30 Dec 68

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